Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1)Appeal from Order No. 393 of 2003

United India Insurance Company
Limited, through its Divisional Manager,
Divisional Officer, Nainital Road,
Haldwani, District Nainital.

..... Appellant

Versus

1.Smt. Basanti Devi W/o Shri Lok Bahadur,
R/o Bhagirithi, Tehsil and District Bageshwar,
Uttaranchal,
2.Sri Mahesh Chandra Arya
S/o Shri Kishan Ram,
R/o Village & Post Office Garurh,
District Bageshwar, Uttaranchal.

..... Respondents.

(2)Appeal from Order No. 394 of 2003

United India Insurance Company
Limited, through its Divisional Manager,
Divisional Officer, Nainital Road,
Haldwani, District Nainital.

..... Appellant.

Versus

1.Smt. Rama Devi W/o late Prem Bahadur,
at present R/o Bhagirithi, Tehsil and
District Bageshwar,

2.Sri Mahesh Chandra Arya
S/o Shri Kishan Ram,
R/o Vilalge & Post Office Garurh,
Tehsil & District Bageshwar, Uttaranchal.

..... Respondents.

Sri D.S. Patni, learned counsel for the appellant,
None for the respondents.

Date: 2nd September, 2004.

Hon'ble P.C. Verma, J.,
Hon'ble B.S. Verma, J.

Both these appeals are being heard together and decided by one and common order as the facts and

question involved are common and also the vehicle involved in the accident and the date of accident is same.

2- These appeals have been preferred by the united India Insurance Company Ltd. under section 173 of the Motor Vehicles Act, 1988 against the separate judgment and award dated 02.09.2003 passed by the Motor Accident Claims Tribunal/District Judge, Bageshwar in Motor Accident Claim Case No. 08 of 2002 and 7 of 2002 respectively, whereby the claim petitions were decreed against the Opp.party-United India Insurance Company for a compensation of Rs.4,08,000/- & Rs. 3,60,000/- respectively alongwith interest at the rate of 9% per annum from the date of claim petition till the date of actual payment.

2- Brief facts giving rise to these appeals are that on 6.7.2002 one person was carrying bricks in Truck No. UP 28-0357. On the said truck deceased Lok Bahadur and Prem Bahadur were boarded besides other persons. When the said Truck reached near New Basti at Bageshwar Dafot motor marg, it fell down from the road due to rash and negligent driving of its driver. The persons sitting on the said truck sustained grievous injuries due to said accident. Deceased Lok Bahadur and Prem Bahadur died on the way when they were taken to Hospital due to the injuries. The deceased Lok Bahadur was 32 years old and deceased Prem Bahadur was 30 years old at the time of accident. They each were earning Rs. 100/- per day by doing labour work. The claimant-widow of the deceased filed the separate claim petition for compensation of Rs. 4,00,000/- each on account of dependency loss.

3- The opposite parties contested the claim petition before the Tribunal by filing their separate written statements. The Opp.party No.1 denied the allegations of the

claim petition and alleged that the said truck was insured with United India Insurance Company on the ill-fated day. The Opp.party No.2-United India Insurance Company also denied the allegations of the claim petition and alleged that in the goods carrying vehicle the passengers were traveling with the consent and knowledge of the driver and owner of the said truck. Hence the truck was not plying in accordance with the terms and conditions of the insurance policy. On the pleadings of the parties, the Tribunal framed necessary issues in each case and on the basis of the evidence allowed the claim petitions accordingly against the United India Insurance Company. Feeling aggrieved, the Insurance Company has come up in these appeals.

4- The learned counsel for the appellant contended that because the deceased were traveling in a goods vehicle without ticket as such they were gratuitous passengers and also it cannot be corroborated from the facts and circumstances of the case that the deceased were owner of the goods or representative of owner of goods. The deceased were unauthorised and gratuitous passengers, therefore no compensation could be paid. We have gone through the material on record and perused the impugned judgments. The learned Tribunal framed as many as four issues in each case. In its finding on issue No.1 which is related to rash and negligent driving, the Tribunal on the basis of the evidence held that the accident occurred due to rash and negligent driving of the truck driver. On issue No.2 the Tribunal held that the on the date of accident the offending truck was having a valid permit and was plying under the terms and conditions of the insurance policy. It was also held in issue No.3 that the offending truck was fully insured with the Untied India Insurance Company. On issue No.4, which is related to compensation, the Tribunal,

as alleged by the claimants in their claim petitions, held that the deceased alongwith other labourers were traveling with the owner of the goods in the said truck to unload the bricks. We are of the opinion that the Tribunal has rightly held the Insurance Company liable for compensation in view of sub clause (i) of clause (1) Sec. 147 of the Motor Vehicles Act, 1988 which reads as under:-

> *"against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place."*

Nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the cases under appeals. Accordingly, the appeals fail on merit.

5- Both these appeals are dismissed. The impugned judgment and awards are upheld. No order as to costs. The amount deposited in appeals, shall be remitted to the Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

02.09.2004
P.Singh